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RIGHT OF BANK TO REPUDIATE PAYMENT TO FOREIGN CORRESPONDENT

In Gurdus to use of Solnicki v. Philadelphia National Bank (273 Pa. 110, 116 Atl. 672, 23 A. L. R. 1227), the Court held that a bank which neglects to terminate the authority of its correspondent in a foreign country when the government changes and takes possession of the banking cannot avoid liability to one who takes up a draft against a warehouse receipt, and thus becomes entitled to possession of the property covered by the receipt, although its correspondent does not account for the funds received by it. In this case it appeared that Evans & Co. sold to the legal plaintiff, Gurdus, sixty-two cases of glazed kid, the former agreeing to deliver it to the latter in Philadelphia, upon payment being made therefor. For the purpose of obtaining the purchase price Evans & Co. drew its draft upon Gurdus, at Moscow, Russia, and defendant purchased it and the warehouse receipt for the kid, and forwarded the draft to its correspondent, the Moscow Industrial Bank of Moscow, Russia, accompanied by its (defendant's) nonnegotiable certificate to the effect that against the said draft it held the warehouse receipt, which it would deliver to the purchaser of the kid upon payment of the draft, and authorized its said agent to collect the amount of the draft from Gurdus, for the account of defendant, and upon its payment to deliver the draft and certificate to him. Gurdus sold his interest in the agreement of sale and kid to Solnicki, the use-plaintiff. Upon the receipt of the draft by the Moscow Industrial Bank it demanded payment thereof from Gurdus, and the use-plaintiff paid to it the full amount due. This the bank accepted as agent for defendant, and delivered to the use-plaintiff the draft and a receipt in full for the payment, as it had been directed by defendant to do. Thereafter the use-plaintiff settled in full with Gurdus, who from that time had no interest in the agreement of sale or the kid. The use-plaintiff demanded and defendant refused to deliver the warehouse receipt.

The kid was sold while the Kerensky government was in existence, but in the meantime Kerensky was overthrown by the Soviet Republic, which was not recognized by this country. This, the defendant contended, the Court should judicially notice, and also that the Court should judically know that the change resulted in so paralyzing the judiciary of Russia as to hinder defendant from forcing its correspondent to account for the money paid. It was held that no Court could judicially notice this alleged situation, but assuming that the Court could take judicial notice of conditions in Russia, and that by reason of such conditions the Moscow Industrial Bank would not be able to honor defendant's checks drawn against its account, it must necessarily follow that defendant was bound to take notice of these facts and act accordingly. "A Court does not take judicial notice of such matters because it has some superior knowledge in regard thereto, but only because they are so certainly true and so well known that everybody is supposed to take notice thereof. This being so, defendant knew of the facts in relation to the fall of the one government and the control by the other, as early as November 7, 1917, and it could and should have attempted to recall the agency of the Moscow Industrial Bank, or notify it not to accept and plaintiff not to pay the draft. It did none of these things; on the contrary, by drawing checks on the account after that date, it affirmed plaintiff's right to pay the draft and re-

ceive it and the certificate, unless, indeed, defendant so acted in ignorance of the situation in Russia, and, if it was ignorant, then the facts were not so certain and well known as to cause either the Court or plaintiff to take notice thereof; hence, the latter would not be bound unless shown to have otherwise acquired knowledge on the subject, and of this no proof was attempted."

Further, the defendant contended: The payment to the Moscow Industrial Bank, if made, did not have the legal effect of a payment to the defendant bank, because there can be no agency to receive without a liability to account, and there can be no liability to account when no government exists which will or can enforce such liability.

In answering this contention, the Court said:

"Aside from that which has already been said, this novel and remarkable contention, if otherwise sustainable, would still have to be overruled, because it overlooks the difference between a liability to account and an opportunity to compel accounting. It would be a strange conclusion, involving little less than a travesty of justice, if it were held, where an agent authorized to receive payment of an account in fact receives it by virtue of the authority thus given, that subsequent difficulties, which operated to prevent the principal from collecting from its agent the money thus paid, but for which the innocent payer is not responsible and of which he had no knowledge, should result in his bearing the loss, rather than the principal who clothed the agent with authority."

In this connection the following, clipped from the Solicitors' Journal, an English law publication, for June 16, 1923, is of interest:

"The decisions of the Court of Appeal in the two cases of Russian Commercial & Industrial Bank v. Le Comptoir d' Escompte de Mulhouse and Banque Internationale de Commerce de Petrograd v. Goukassow, Times, 13th inst., depend on interesting questions arising out of the Russian Revolution. One point in both cases was the recognition of the Soviet Government as the *de facto* Government of Russia. For this country the matter is settled by the decision of the Court of Appeal in a case which can be conveniently abbreviated as Luther v. Sagor, 1921, 3 K. B. 532. Evidence was produced that the English Foreign Office had written to the appellants' solicitor a letter of 20th April, 1921, stating that the British Government recognized the Soviet Government as the *de facto* Government of Russia, and in consequence it was held that 'the acts of that Government must be treated by the Courts of this country with all the respect due to the acts of a duly recognized foreign sovereign State.' In France, on the other hand, there has been no such recognition. But the Soviet Government in December, 1917, issued a Decree nationalizing banking, so that there should be established 'a single People's Bank of the Russian Republic —a bank genuinely serving the interests of the people and the poorest classes,' and the Court of Appeal held that the result was not to amalgamate the existing banks and so perpetuate them, but to destroy them. Hence, in the first of the above two cases, the plaintiff bank, which had been a Russian bank, had ceased to exist and could not sue. This was a somewhat facile way of getting rid of the questions of substance which arose in the action. Further, since the bank had ceased to exist, it could not be ordered to pay costs. A non-existent person, said Bankes, L. J., can neither receive nor be ordered to pay costs."

NOTES OF IMPORTANT DECISIONS.

CONGRESS MAY REGULATE FUTURE SALES OF GRAIN ON BOARDS OF TRADE.—The Chicago Board of Trade sought to enjoin various federal officials from enforcing the provisions of a Congressional statute, which regulates dealing in grain for future delivery, on the ground that the act was unconstitutional. The petition was denied. On appeal, held that the dealings in "futures" result in the constant manipulation of the market and adversely affect the free flow of interstate commerce. The transactions on the Chicago Board of Trade, being indispensable to the continuity of the flow of grain from the West to the East, constitute a part of the interstate commerce in that commodity and are therefore subject to regulation by Congress. Board of Trade v. Olsen et al., U. S. Supreme Court, April 16, 1923.

Mr. Chief Justice Taft delivered the opinion of the Court, in which he in part said:

"Appellants contend that the decisions of this Court in Hill v. Wallace (259 U. S. 44) is conclusive against the constitutionality of the Grain Futures Act. Indeed in their bill they pleaded the judgment in that case as *res adjudicata* in this, as to its invalidity. The act whose constitutionality was in question in Hill v. Wallace was the Future Trading Act (ch. 86, 42 Stat., 187). It was an effort by Congress, through taxing at a prohibitive rate sales of grain for future delivery, to regulate such sales on boards of trade by exempting them from the tax if they would comply with the congressional regulations. It was held that sales for future delivery where the parties were present in Chicago, to be settled by offsetting purchases or by delivery, to take place there, were not interstate commerce and that Congress could not use its taxing power in this indirect way to regulate business not within federal control. We said (p. 68): 'Looked at in this aspect and without any limitation of the application of the tax to interstate commerce, or to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce we do not find it possible to sustain the validity of the regulations as they are set forth in this act. A reading of the act makes it quite clear that Congress sought to use the taxing power to give validity to the act. It did not have the exercise of its power under the commerce clause in mind and so did not introduce into the act the limitations which certainly would accompany and mark an exercise of the power under the latter clause.'

"Again, on page 69, we said: 'It follows that sales for future delivery on the board of trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon.'

"The Grain Futures Act which is now before us differs from the Future Trading Act in having the very features the absence of which we held in the somewhat carefully framed language of the foregoing prevented our sustaining the Future Trading Act. As we have seen in the statement of the case, the act only purports to regulate interstate commerce and sales of grain for future delivery on boards of trade because it finds that by manipulation they have become a constantly recurring burden and obstruction to that commerce. Instead, therefore, of being an authority against the validity of the Grain Future Act, it is an authority in its favor.

"The Chicago Board of Trade is the greatest grain market in the world (Chicago Board of Trade v. United States, 246 U. S. 231, 235). Its report for 1922 shows that on that market in that year were made cash sales for some 350,000,000 bushels of grain, most of which was shipped from states west and north of Illinois into Chicago, and was either stored temporarily in Chicago or was retained in cars and after sale was shipped in large part to eastern states and foreign countries. This great annual flow is made up of the cash grain sold on the exchange, the cash sales to arrive (Chicago Board of Trade v. United States, 246 U. S. 231), and the comparatively small percentage of grain contracted to be sold in the futures market not settled by offsetting (Chicago Board of Trade v. Christie Grain Co., 198 U. S. 236, 248). The railroads of the country accommodate themselves to the interestate function of the Chicago market by giving shippers from western states bills of lading through Chicago to points in eastern states with the right to remove the grain at Chicago for temporary purposes of storing, inspecting, weighing, grading, or mixing, and changing the ownership, consignee or destination and then to continue the shipment under the same contract and at a through

rate (Bacon v. Illinois, 227 U. S. 504). Such a contract does not prevent the local taxing of the grain while in Chicago; but it does not take it out of interstate commerce in such a way as to deprive Congress of the power to regulate it, as is plainly intimated in the authority cited (p. 516) and expressly recognized in Stafford v. Wallace (258 U. S. 495, 525, 526). The fact that the grain shipped from the West and taken from cars may have been stored in warehouses and mixed with other grain, so that the owner receives other grain when presenting his receipt for continuing the shipment, does not take away from the interstate character of the through shipment any more than a mixture of the oil or gas in the pipe lines of the oil and gas companies in West Virginia, with the right in the owners to withdraw their shares before crossing state lines, prevented the great bulk of the oil and gas which did thereafter cross state lines from being a stream or current of interstate commerce (Eureka Pipe Line v. Hallanan, 257 U. S. 265, 272; United Fuel Gas Co. v. Hallanan, 257 U. S. 277, 281).

"It is impossible to distinguish the case at bar, so far as it concerns the cash grain, the sales to arrive, and the grain actually delivered in fulfillment of future contracts, from the current of stock shipments declared to be interstate commerce in Stafford v. Wallace (258 U. S. 495). That case presented the question whether sales and purchases of cattle made in Chicago at the stock yards by commission men and dealers and traders under the rules of the stock yards corporation could be brought by Congress under the supervision of the Secretary of Agriculture to prevent abuses of the commission men and dealers in exorbitant charges and other ways, and in their relations with packers prone to monopolize trade and depress and increase prices thereby. It was held that this could be done even though the sales and purchases by commission men and by dealers were in and of themselves intrastate commerce, the parties to sales and purchases and the cattle all being at the time within the City of Chicago.

"But it is contended that it is too remote in its effect on interstate commerce and that it is not like the direct additions to the cost to the producer of marketing cattle by exorbitant charges and discrimination of commission men and dealers, as in Stafford v. Wallace. It is said there is no relation between prices on the futures market and in the cash sales. This is hardly consistent with the affidavits the plaintiffs present from the leading economists, already referred to, who say that dealing in futures stabilizes cash prices. It is true that the curves of prices in the futures and in the cash sales are not parallel and that sometimes one is higher and sometimes the other. This is to be expected because futures prices are dependent normally on judgment of the parties as to the future, and the cash prices depend on present conditions, but it is very reasonable to suppose that the one influences the other as the time of actual delivery of the futures approaches, when the prospect of heavy actual transactions at a certain fixed price must have a direct effect upon the cash prices in unfettered sales. The effect of such a 'deal' as that of May, 1922, as explained by Mr. J. H. Barnes, shows this clearly and illustrates in a striking way the direct effect of such manipulation in disturbing the actual normal flow of grain in interstate commerce most injuriously. Mr. Barnes also points out the effect of the operation of the rule limiting deliveries to warehouse receipts from warehouses selected by the directors of the board, whose unregulated power to suspend or modify the rule pending settlement adds to the speculative character of the market and frightens consignors.

"More than this, prices of grain futures are those upon which an owner and intending seller of cash grain is influenced to sell or not to sell as they offer a good opportunity to him to hedge comfortably against future fluctuations. Manipulations of grain futures for speculative profit, though not carried to the extent of a corner or complete monopoly, exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only this justifiable hedging, but disturb the normal flow of actual consignments."

FEE AGREEMENT BY ATTORNEY FOR INTEREST IN LAND IN LITIGATION IS WITHIN STATUTE OF FRAUDS.—The Supreme Court of Minnesota, in Oxborough v. St. Martin, 187 N. W. 707, 21 A. L. R. 350, holds that an agreement between attorney and client that the attorney shall receive as a part of his fee a portion of certain land involved in the litigation is within the Statute of Frauds, and in order to be valid such agreement must be in writing. "Clearly the contract alleged purported to create an 'estate or interest in lands,'

and under the provisions of Gen. Stat. 1913, sec. 7002, such estate or interest could only be created by an instrument in writing." Further, on this question, the Court said:

"Interveners contend that the provisions of the statutes with reference to the compensation and lien of attorneys override the Statute of Frauds. These statutes provide that 'a party shall have an unrestricted right to agree with his attorney as to his compensation for services, and the measure and mode thereof,' and that 'an attorney has a lien for his compensation whether the agreement therefor be express or implied upon the cause of action, and upon the interest of his client in any money or property involved in or affected by any action or proceeding in which he may have been employed.' We find nothing in these statutes inconsistent with the Statute of Frauds. Attorney and client may make such agreement, as to attorney's fees as they choose, but if they choose to agree upon a conveyance of land as part or whole of the attorney's fees, there is nothing in these statutes which expressly or impliedly provides that such agreement is not required to be in writing, as the Statute of Frauds provides. Interveners contend that under the 1917 Law the performance of the contract by the attorneys created a lien upon the title to the lands to the extent fixed by the terms of the contract, to-wit, an undivided one-half interest therein, or, otherwise stated, that there may be a lien for the attorney's compensation, though his compensation is to be paid in land. We are unable to adopt this theory. As stated in another part of the intervener's brief, a lien upon the land to the extent of an undivided one-half interest in the fee thereof, if it has any meaning at all, means nothing more or less than the ownership of said one-half interest. It would be mere evasion to say that the Statute of Frauds may be avoided by calling a transfer in fee a mere lien."

This view is supported by a number of cases mentioned in 21 A. L. R. 352, among which are: Jackson v. Stearns, 58 Oreg. 57, 113 Pac. 30, 37 L. R. A. (U. S.), 639, Ann. Cas. 1913A 284; Farrin v. Matthews, 62 Oreg. 517, 124 Pac. 675, 41 L. R. A. (U. S.) 184; Sprague v. Haines, 68 Tex. 215, 4 S. W. 371, overruling Anderson v. Powers, 59 Tex. 213; Martin v. Bateman, 111 Wash. 634, 191 Pac. 759.

THE POWERS OF A MERCANTILE AGENT—THE FACTORS ACTS

By Donald MacKay

Very seldom does one see any reference nowadays to the Factors Acts, but these statutes embody a vital and far-reaching principle of English law. The recent case of Folkes v. King, to which we are to refer later, illustrates how they operate, and furnishes the occasion of our offering some explanatory observations which we trust may be of practical service to our readers.

The general object of this branch of legislation may be said to have been to bring the law of possession of movable property, regarded as a title to dispose of it, into accordance with the general feeling and everyday usages of business men. The ordinary trade understanding is that if a man is in possession of mercantile commodities, or of documents of title, he may be assumed either to be their owner, or, if not, to be an agent having authority from the owner to dispose of them, and that, in the latter case, the owner should be the sufferer in the event of a fraudulent or improper disposition by the agent, rather than a third party transacting on the faith of the apparent authority to dispose conferred by the possession of the commodities or documents. To carry out this view to its fullest extent would be to assimilate the transfer of movable property to that of negotiable instruments; the Factors Act steers a middle course between that extreme and the principle of the common law (more particularly in England), that the purchase or pledgee of movable property of the ordinary mercantile character took, except in the case of sales in market overt, no better title than his author, and was subject to all exceptions which were pleadable against him. The Factors Acts of 1889 is a consolidating statute which repeals and reproduces the provisions of a series of Acts passed between 1823 and 1877.

A mercantile agent is defined, for the purposes of the Act, as (s. 1) "a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods," and the Act proceeds in Section 2 to lay down as follows the "Powers of a mercantile agent with respect to disposition of goods":

(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge or other disposition, which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent: provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

It was under that section that the question in Folkes v. King arose. The plaintiff delivered his motor car to a mercantile agent, to be sold on commission. It was agreed beween the plaintiff and the mercantile agent that the motor car was not to be sold under £575, without the plaintiff's permission. The mercantile agent, however, sold the plaintiff's motor car without the plaintiff's permission, for £340, to a bona fide purchaser, without notice of the fraud, and converted that sum to his own use. The motor car was re-sold to another purchaser, who later sold it to the defendant. In an action by the plaintiff for the return of the motor car or its value, the defendant pleaded that the motor car had been sold to the defendant's predecessor in title by a mercantile agent who was in possession of it with the plaintiff's consent. The learned judge who tried the action found that the mercantile agent obtained possession of the motor car with the intention of defrauding the plaintiff of his property, and that at no time did he intend to carry out the arrangement he had made with the plaintiff, but that his intention was to sell it at the best price obtainable, and to use the proceeds for his own purposes. His lordship held, accordingly, that the mercantile agent could pass no title to the purchaser and that, therefore, the plaintiff could recover. It has now been held, on appeal, that notwithstanding that the plaintiff had been induced by fraud to part with the possession of the motor car, yet the possession of the motor car by the mercantile agent was possession with the consent of the plaintiff, and the mercantile agent could, therefore, give a good title to a bona fide purchaser for value without notice, and the defendant was protected by s. 2 of the Factors Act, 1889.

In delivering the leading opinion of the Court of Appeal, Lord Justice Bankes said: "Section 2 of the Factors Act provides protection in statutory form to persons who, bona fide and without notice of any want of authority on the part of a mercantile agent, have purchased goods

from the agent, he being in possession of the goods with the consent of the owner. I can see no reason why rules and principles of the criminal law are to be introduced for the purpose of putting a construction on the language of the section. What the section refers to is the consent of the owner. To establish a consent it is no doubt necessary to consider what the state of mind of the owner of the goods was with reference to the possession of them by the mercantile agent. I fail to see how far this purpose, or for any purpose of applying the section, it can be material to look into the mind of the mercantile agent, any more than it would be to look into his pocket to ascertain whether he was in a position to pay for the goods. It is not universally true that no title can be obtained from a thief, as witness a sale by a thief in market overt. It is admitted that where possession of goods has been obtained by false pretenses, or where a bailee has stolen them, a title by a bona fide purchaser can be made under the section. If so, why not where the goods have been stolen by a trick? The question of the guilt of the alleged thief, where his intention is material, is, as it appears to me, so entirely immaterial in considering whether a title has been made under the Factors Act to the goods which it is alleged that he has stolen, that the two considerations should be kept entirely distinct. To allow the one to be defeated by a consideration of the other is, in my opinion, to sweep away a great part of the protection which the Factors Act was intended to provide, and which, when incorporated into a statute, was not introducing any new principle, but merely continuing one long known to the Mercantile law."

These observations are certainly in accord with the purpose and trend of the Factors Acts which are that an ostensible mercantile agent ostensibly in possession of goods can give a good title in the ordinary course of business to a bona fide purchaser.

AMERICANISM

THE DECLARATION OF INDEPENDENCE AND THE CONSTITUTION

Our Constitution is the Declaration of Independence writ large as the basic law of our American form of Government. Having won their national Independence, the colonists set about to establish a government on the foundations of liberty and equal justice which was voiced in the Declaration. They set about to form a national government which should above all else, in the words of the Preamble to the Constitution, secure the blessings of liberty to themselves and to their posterity. The task was not an easy one because it was necessary to have a strong central government for the sake of protection from foreign powers, and at the same time to guarantee to each citizen as great liberty of action and freedom from governmental interference as was possible.

The Constitution, adopted in 1788, gave greater liberty and greater power to the citizens of the United States than any government had ever before given to the common people. It provided, furthermore, for amendments by means of which even greater liberty has been secured.

At the present time, the Constitution, with its amendments, guarantees: Freedom of religious belief, freedom of speech, freedom of the press, the right to petition, the right to keep and bear arms, the right to vote without abridgment of this right because of race, color, sex or previous condition of servitude. In short, the Constitution guarantees to every citizen, high or low, absolute freedom in thought and conduct, so long as he does nothing which interferes with the rights or liberties of a fellow citizen.

The Preamble to the Constitution and the first ten amendments, which constitute our Bill of Rights, the leading provisions of which are above set forth, are the expressions of the spirit and ideals that were voiced in the Preamble to the Declaration.

The Bill of Rights embodies "certain inalienable rights" which American citizens have enjoyed since the foundation of our government, which are as common as the air we breathe and which are, therefore, not appreciated as they should be. Can any one estimate the "blessings of liberty" that have been vouchsafed by the provisions imbedded in the Constitution, which protect the rights of private property, guarantee freedom of speech, freedom of the press and freedom of religious belief, insure the right of trial by jury, abolish all forms of nobility or social caste and give every citizen an equal chance in the race of life?

With such a basic law as a protection of the people even against themselves, which cannot be changed by popular vote or a majority of a State Legislature or Congress, but only by the vote of at least three-fourths of the States, and with the wonderful progress our country has made under this Constitution, it behooves us to support it loyally and defend it against all enemies in whatever form the attack may come; to hold fast to it as the very Ark of our Covenant and to heed well the admonition of Scripture, "Remove not the ancient landmark which thy Fathers have set."

During an address on "The Constitution Between Friends," delivered before the Missouri Bar Association at Kansas City, Missouri, September 26th, 1913, Henry D. Estabrook paid the following magnificent tribute to the Constitution:

"And so, on this great continent, which God had kept hidden in a little world—here, with a new heaven and a new earth, where former things had passed away, the people of many nations, of various needs and creeds, but united in heart and soul and mind for the single purpose, builded an altar to Liberty, the first ever built, or that ever could be built, and called it the Constitution of the United States. * * *

"O marvelous Constitution! Magic parchment, transforming word, maker, monitor, guardian of mankind! Thou hast gathered to thy impartial bosom the peoples of the earth, Columbia, and called them equal. Thou hast conferred upon them imperial sovereignty, revoking all titles but that of man. Native and exotic, rich and poor, good and bad, old and young, the lazy and the industrious, those who love and those who hate, the mean and lowly, the high and mighty, the wise and the foolish, the prudent and the imprudent, the cautious and the hasty, the honest and the dishonest, those who pray and those who cure—these are God's children—these are thy rulers, O Columbia. Into our hands thou hast committed the destinies of the human race, even to the omega of thine own destruction. And all thou requirest of us before we o'erstep boundaries blazed for guidance is what is required of us at every railroad crossing in the country: 'Stop. Look. Listen.' Stop and think. Look before and after and to the right and left. Listen to the voice of reason and to the still, small voice of conscience. * * *

"If the zealot, impatient of the wise caution and delay enjoined by the Constitution, would break down its barriers by hasty action, he should be compelled, if only as penance, to study the Constitution and to know all the circumstances out of which it grew, the quality of the men who fashioned it, as well as the quality of the work accomplished by them. He should be taught these things in school. We have deposed the Bible in our public schools; would any American object if we substituted the Constitution? Why should our schools have a 'Flag Day?' Why should a teacher point her pupil to the flag and the stars enskied on it, as the symbol of human liberty, without telling him of the tremendous Law that put each star in its place and keeps it there? I would fight for every line in the Constitution as I would for every star in the flag, for flag and Constitution will live or die together. * * *

"I know not if the times are ripe, or if events are merely gathering to a head; but soon there must come some one—some

Washington in the field or some Marshall in the forum—who will sound a trumpet that will once more rally us to the defense of the Law."

THE DANGERS THAT THREATEN OUR FREE INSTITUTIONS

During and since the War, and in certain instances some time prior to the War, there have many tendencies and elements crept into American life and government which would undermine the foundation stone of Liberty which our fathers laid and sealed with their blood.

On the one hand, there has been a tendency, as previously remarked, to depart from the republican or representative form of government to legislation by popular vote in such ways as are represented by the initiative, referendum and recall, the primary system of selecting candidates for office, insiduous attacks upon the Supreme Court of the United States, and other forms of hasty legislation whereby spasmodic agitation of public opinion tends to undermine and overreach the system of government which the makers of our Declaration and Constitution so carefully devised.

In his remarkable book, "Why Should We Change Our Form of Government?" Nicholas Murray Butler says:

"This Government was founded by men whose minds were fixed upon the problems involved in the creation of political institutions. They were thinking of liberty, of representative government, of protection against tyranny and spoliation, and of ways and means by which public opinion might, in orderly fashion, express itself in statute laws, injudicial judgments and in executive acts. The task of the founders was a political task, and with what almost superhuman wisdom, foresight and skill they accomplished it, is recorded history. * * * It is a noteworthy and singular characteristic of our American government that the Constitution provides a means for protecting individual liberty from invasion by the powers of government itself, as well as from invasion by others more powerful and less scrupulous than ourselves. The principles underlying our civic and political liberty are indelibly written into the Constitution of the United States, and the nation's courts are instituted for their protection. * * *

"The representative Republic erected on the American continent under the Constitution of the United States is a more advanced, a more just and a wiser form of government than the socialistic and direct democracy which it is now proposed to substitute for it. * * * To put the matter bluntly, there is under way in the United States at the present time a definite and determined movement to change our representative republic into a socialistic democracy. * * * This attempt is making while we are speaking about it. It presents itself in many persuasive and seductive forms. It uses attractive formulas to which men like to give adhesion; but if it is successful, it will bring to an end the form of government that was founded when our Constitution was made and that we and our fathers and our grandfathers have known and gloried in.

"We began the destruction of the fundamental principles of representative government in this country when we reduced the representative to the position of a mere delegate; when we began, as is now quite commonly the case, to instruct a representative as to what he is to do when elected; when we began to pledge him, in advance of his election, that if chosen he will do certain things and oppose others—commonly the case, to instruct a representative from the high, splendid and dignified status of a real representative chosen by his constituency to give it his experience, his brains, his conscience and his best service, and made him a mere registering machine for the opinion of the moment, whatever it might happen to be."

Then, too, the necessities of the War gave an unwonted impetus to our Federal Gov-

ernment to reach out and interfere with the powers which under the Constitution belong to the States, and this in turn has resulted in a serious interference with local self-government within the States, and in general, a tendency to lean too much on the government in our political and social relations. Thus it has come about that the principle, "That government is best which governs least," is being constantly violated.

Again, there has been a most threatening advance in radicalism in this country in recent times. Various degrees of Bolshevistic and Communistic doctrines are being broadcast that would entirely change our system of government from that of individual freedom and initiative to a Communistic state. It is said there are one million five hundred thousand radicals who desire such a change in our government in the United States at the present time and that some seventy-five different socialistic publications are being issued which reach regularly one million readers. Why any good American citizen should be in sympathy with such doctrines, it is hard to understand. This movement has been fomented in large measure by the type of immigrants which have come to our country in recent years. The great problem of immigration, therefore, is something more than a purely economic question, for many publicists maintain that it is more largely a biological question and that the class of immigrants we have been receiving in recent times are watering the nation's life-blood. But the spread of radical and I. W. W. doctrines cannot be wholly laid at the door of the recent immigrant, for many a native son needs to be re-born in the faith of his fathers. The principle to which we should adhere is thus well stated by Theodore Roosevelt:

"In the first place, we should insist that if the immigrant who comes here does in good faith become an American and assimilates himself to us, he shall be treated on an exact equality with everyone else, for it is an outrage to discriminate against any such man because of creed or birthplace or origin. But this is predicated upon the man's becoming in very fact an American and nothing but an American.

"If he tries to keep segregated with men of his own origin and separated from the rest of America, then he isn't doing his part as an American. There can be no divided allegiance at all.

"We have room for but one flag, the American Flag, and this excludes the red flag, which symbolizes all wars against liberal government and civilization just as much as it excludes any foreign flag of a nation to which we are hostile. We have room for but one language here and that is the English language, for we intend to see that the crucible turns our people out as Americans of American Nationality, and not as dwellers in a polyglot boarding house; and we have room for but one soul loyalty, and this is loyalty to the American people."

THE NATURE AND OBLIGATIONS OF AMERICAN CITIZENSHIP

If ours is to continue to be a government of the people, it is obvious that the people must be fit to govern. We live in a land where laws are nothing unless sustained by public opinion. It is Public Opinion, in the last analysis, which constitutes our State Legislatures, our Governors, our Congress and President. How essential, therefore, it is that public opinion shall be educated so that wise, upright and loyal conduct of governmental affairs will result, for just in proportion to the continued freedom of our institutions is the need of men in all walks of life who are actuated by such motives and endowed with such courage and wisdom as were the men who wrote the venturous Declaration of Independence—men who stand outside of party or class or selfish interest and who are willing to seek and tell the truth, to stand for the right though the heavens fall, and to do their part in creating an all-American public opinion, grounded on those Ameri-

can principles and ideals that were heralded in the Declaration of Independence and embodied in the Constitution of the United States.

Such is the leadership that the times demand. We are heirs of a great inheritance; the spirits of those men who penned the Declaration of Independence call upon us today to see that their work is carried on. Deep calleth unto deep. The past history of our country inspires and the future beckons. What shall be our answer? Shall we allow the counsels of doctrinnaires and communists gradually to change the only successful system of self-government that has ever existed for a similar period? Shall we not rather summon all the forces of law and order, of intelligence and patriotism, of American character and devotion to country, and with a re-awakened civic consciousness stand by the Government our fathers bequeathed to us, preserve for ourselves and our posterity the heritage of freedom embodied in our Constitution, maintain unimpaired the American free public school, a free press, freedom of speech, freedom of religious belief and equal opportunity before the law? With such a program, with the spirits of the mighty dead inspiring us, with a glorious past impelling us toward a still more glorious future, let us resolve each to do his part in making America in very truth that ideal Republic which sages and prophets have foretold in beatific vision.

Eternal Vigilance is indeed the price of Liberty. If the principles enunciated in the Declaration of Independence are violated, if the Constitution is being undermined through disregard of the individual rights which it guarantees, if the right of trial by jury is subject to criticism in its actual workings, if the supremacy of the Law is in any wise flouted, if our courts are losing in popular regard and support, if the right—and duty—of suffrage is not exercised, if the Soviet method of government by a class is in any wise taking the place of government by all the people—it is due to the indifference and inactive attitude of our citizens who devote all their time and thought and activities to their own private affairs and neglect active participation in the business of self-government. Strong and powerful as our country has grown in material development under a governmental system that has stood the test of time, the free government which our fathers founded can endure only through a reasonable amount of thought and time devoted to its requirements by the citizens who love it and wish to have it preserved in its full force and integrity. "This Union cannot expire as the snow melts from the rock, or a star disappears from the firmament. When it falls the crash will be heard in all lands. Wherever the winds of Heaven go, that will go, bearing sorrow and dismay to millions of stricken hearts; for the subversion of this Government will render the cause of Constitutional Liberty hopeless throughout the world. What nation can govern itself, if this nation cannot?"

In very truth we Americans hold the destiny of our country in our own hands; nay more, the destiny of the whole world. For the world is today looking to us as the one country on the globe that can eventually bring order out of chaos. A pistol shot in Europe in 1914, followed by the madness of a grasping military autocracy, set the clock of European civilization back for centuries. Even England, to whom we have always looked to preserve the best traditions of Anglo-Saxon civilization, is today tottering under a movement that would revolutionize our whole economic structure.

But notwithstanding revolutionary rumblings from without or from within, America will continue to hew close to the line marked out for it by the men who penned the Declaration and framed the written Constitution under which we have gained our present proud pre-eminence. The American Republic must live, for it is founded on the rock of Popular Liberty.

It will resist the mad waves of discontent that break against it from the Old World and continue in the future as in the past as "The New World of Opportunity for all that is best in Humanity"—as the America which the Declaration of Independence foretold.—American Bar Association, Citizenship Committee.

UNFAIR COMPETITION—COLOR SCHEME OF TAXICABS

YELLOW CAB CORPORATION OF ROCHESTER v. KORPECK

198 N. Y. S. 864

Supreme Court, Special Term, Monroe County, Feb. 26, 1923

Under Section 877 of the Civil Practice Act, after the plaintiff had adopted a characteristic color scheme and dress for its taxicabs and popularized the name "yellow cabs," an injunction pendente lite will be granted, restraining the defendants from thereafter adopting and operating cars and using and advertising names calculated to, and which did, deceive the public and divert trade from the plaintiff.

Separate actions by Yellow Cab Corporation of Rochester against Morris Korpeck and against fifteen others, respectively. On motion for temporary injunction. Motion sustained.

Sutherland & Dwyer, of Rochester, for plaintiff.

John J. McInerney, of Rochester, for defendants Korpeck, Dolitz, Schroth, McLaughlin, Ernst, Spencer and Boyling.

Harlan W. Rippey, of Rochester, for defendants Keefe, Chartoff, Van Schuyver, Lurz, Ward, Lucy and Hill.

John F. Kinney, of Rochester, for defendant Reigle.

James S. Bryan, of Rochester, for defendant Alexander.

RODENBECK, J. All of the defendants' yellow cabs appeared upon the streets of the city after the plaintiff popularized the use of that style of cab. The defendants' cabs complained of are all substantially of the same color scheme and dress as the plaintiff's yellow cabs. Cabs painted yellow, or striped yellow, or otherwise having yellow in their make-up, may have appeared on the streets of the city many years ago, but none of them had the distinctive color scheme and dress of plaintiff's cabs. The complaint in this action is, not that yellow is used by the defendants on their cabs, but that it is used in such a combination with black as to constitute an imitation and simulation of plaintiff's cabs, after plaintiff had established a trade and good will, based upon its distinctive color scheme and dress, which is entitled to protection.

(1) The color scheme and dress of the defendants' yellow cabs is designed and calculated to deceive the public. If the methods practiced by the defendants could be legally justified, the city could be overrun with similar yellow taxis under separate individual management, and there would be no sufficient protection against incompetence, excessive rates, financial irresponsibility, and possibly willful misconduct. The result of a multitude of similar colored cars under separate individual management is particularly hazardous in the case of women and children and unprotected patrons. If a prospective patron desires to employ one of plaintiff's yellow cabs, because of the financial responsibility of the company for accidents, assurance against overcharges, competency of the driver, or for any other reason, he is entitled to protection against being misled into taking a yellow cab masquerading as one of plaintiff's cabs.

In addition to the public risks, defendants' practices infringe upon the legal rights of the plaintiff, which has with large outlays and business acumen built up a profitable patronage and good will, with the confidence of the public, of which the defendants seek to take an unfair and unlawful advantage by adopting names, such as "yellow," similar to the name of plaintiff's cabs, and a color scheme and dress which is not distinguishable from plaintiff's by ordinary observation.

(2) The Checker Cab Brokerage Company, as a corporation, has no right to use any name but its own (11 Reports Atty. Gen [1912], vol. 2, p. 109), and any use of the name "Yellow Taxicab Company," or the yellow color scheme, was abandoned before the plaintiff came into the field. Prevost, who filed "Yellow Taxicab Co.," as an assumed name in 1916, has filed 11 assumed names since then, including "Black & White Taxi Co.," all of which he would have a monopoly of, if defendants' contention in this case is sound. If the use of suitable names could be cornered in this way, so could color schemes and dress, by the use of a car or two for a day or two. The use of the name "Yellow Taxicab Co.," and any use of cars with a body and cowl of a lemon yellow, or other color scheme and dress approximating that of plaintiff's, was abandoned by the adoption of other names and other color

schemes. It is too late to urge a desultory and temporary use in 1916 or 1917 of yellow in the color of cabs, such as the facts in this case show, after the plaintiff in 1921 began the expenditure of its money and built up a successful business, with a distinctive trade-marked color scheme and dress for its cabs, which the defendants obviously seek to prey upon and take advantage of by subterfuge and deception. Symonds v. Greene, 28 Fed. 384 (1886). The fact that some of the defendants chose a name, and all of them a style of painting, similar to plaintiff's cabs, from the long list of names and the numerous styles available, and after plaintiff had popularized the color scheme and dress of its cabs, is its own commentary. If the defense of prior use is available to the defendants, it is also a weapon of attack to restrain the operation of plaintiff's cabs. The legal rights and greater equities are on the side of the plaintiff.

This ruling does create a monopoly in plaintiff. The field for honest competition in taxi service is open to the defendants. Let them adopt and use an available assumed name, that does not interefere with plaintiff's rights, and a color scheme and dress for their cars which does not give them the appearance of imitating, simulating and impersonating plaintiff's cabs, and they will be protected in any rights thus lawfully acquired as the plaintiff is now protected.

The views herein expressed will protect the public, preserve the rights of the plaintiff, and prepare the way for a consistent, systematic, and orderly policy in the use of the streets of the city by taxicabs, and is abundantly supported by decisions where similar questions have been raised. White Studio v. Dreyfoos, 221 N. Y. 46, 116 N. E 796; Ball v. Broadway Bazaar, 194 N. Y. 435, 87, N. E. 674; N Y. Cab Co. v. Mooney, 15 Abb. N. C. 152 (1884 : Black & White Town Taxis, Inc., v. Minezeles, 186 App. Div. 950, 173 N. Y. Supp. 901; Black & White Town Taxis; Inc., v. Aronson, 184 App. Div. 894, 170 N. Y. Supp. 1069; Taxi & Yellow Taxi Operating Co. v. Martin, 91 N. J. Eq. 233, 108 Atl. 763. The case of American Yellow Taxi Operators, Inc, v. Jack Diamond & Yale Taxi Corp., 202 App. Div. 490, 195 N. Y. Supp. 140, is readily distinguishable from the case at bar.

The injunction, effective 10 days after service of an order in accordance herewith, covers the cabs of each defendant described in the complaints, and the use of the color scheme and dress on plaintiff's cabs, and any color scheme and dress approximating it, which would be calculated to mislead the public, and the use of the name "Yellow Cab Corporation," "Yellow Cab Company," "Yellow Taxicab Company," and any other similar name not authorized by law.

So ordered.

NOTE—*Imitating Color Scheme of Rival Taxicabs as Unfair Competition.*—In the case of Weinstock v. Marks, 109 Cal. 529, defendant resorted to the device of erecting a duplicate building similar in design and structure alongside the mercantile house of a very successful trader. Relief was granted to complainant. The Court commanded defendant forthwith to distinguish his place of business from that in which plaintiff was carrying on his business, so as to sufficiently indicate to the public that it was a different place of business from the plaintiff's. This decision is approved by Professor Burdick in his treatise on the laws of Torts, first edition, pp. 391-392.

It is unfair trade for a competitor to paint his taxicabs so that by the ordinary patron they are not distinguishable from those of complainant which had earned a patronage and good will under a peculiar and distinctive painting of its cabs, the predominant feature being a conspicuous yellow body. Taxi and Yellow Taxi Operating Co. v. Martin, 91 N. J. Eq 233, 108 Atl. 763.

The imitation of color so that defendant's cabs when viewed from a short distance appeared the same as complainant's justified a preliminary injunction, although complainant's cabs displayed the name "Yellow Cab Company," while on defendant's appeared the name "Independent Star." Yellow Cab Co. v. Becker, 145 Minn. 152, 176 N. W. 345.

In Yellow Cab Co. v. Ensler, 214 Ill. 607, injunction was denied, as there was not such similarity as tended to deceive.

Other cases on this question are, Black & W. Co. v. Weir, 26 Pa. Dist. Rep. 650, holding the competition unfair; New York Cab Co. v Mooney (N. Y.), cited in Browne, Trade Marks, p. 573, in which defendants were enjoined; Knott v. Morgan, 2 Keen 213, 48 Eng. Reprint 610 in which relief was granted.

A valuable note on this subject appears in 17 A. L. R. 784.

BOOK REVIEWS

PRIZE CASES

Prize Cases, decided in the United States Supreme Court, 1789-1918, including cases on the instance side in which questions of Prize Law were involved, have been prepared in the Division of International Law of the Carnegie Endowment for International Peace, under the supervision of James Brown Scott, and published by the Oxford University Press, American Branch, New York. They are contained in three volumes.

The collection and publication of these cases, in addition to placing them in accessible form,

was for two reasons. The first, Mr. Scott tells us, consists in the likelihood of the constitution at no distant date (Mr. Scott writing July 15, 1919) of an International Court of Justice which may be called upon to decide questions of Prize Law, and which would be greatly aided in its labors by the opinions of the Supreme Court of the United States, which may be properly considered as the only permanent Court of Prize in existence, as it assuredly is the only court of a permanent nature hitherto created for a Union of States by the States forming that Union.

The second reason, Mr. Scott states, is more specific and concrete, inasmuch as the judgments of the Supreme Court in the matter of Prize, brought together within the narrow compass of three handy volumes, will be at the elbow of statesman, diplomat or jurist who may have to consider and pass upon the German Prize decisions rendered during the World War.

This work places in readily accessible form the many Prize Law decisions of the Supreme Court which are scattered through some 250 volumes of the Reported Cases of that Court. Not a few of these decisions have met with violent opposition at the time of their delivery, but they have stood the test of subsequent experience, and in the end they have had the good fortune to secure the approval not only of the naval profession but of intelligent jurists throughout the world.

OFFICIAL GERMAN DOCUMENTS RELATING TO THE WORLD WAR

The Oxford University Press, American Branch, New York, publish two volumes entitled as above. These are publications of the Carnegie Endowment for International Peace, which, in 1916, published two volumes of Diplomatic Documents relating to the Outbreak of the European War. Since then a number of additional German documents have appeared which, it is said, throw a flood of light upon the outbreak of the war and its termination.

We learn from the publishers that by a resolution of August 20, 1919, the German National Constituent Assembly created a Committee of Inquiry to investigate the responsibility for the war. This committee was divided into four subcommittees. The first was to ascertain the responsibility for causing the war, the second, the responsibility for not ending it sooner, the third, acts of disobedience or disloyalty to responsible political authorities, and the fourth, acts of cruel or harsh conduct of the war. As yet, no reports have been published by the Third or Fourth Subcommittees. The fourth has published three supplements to the stenographic reports of its public hearings, which contain the expert opinions of Colonel Schwertfeger, General von Kuhl and Privy Councilor Professor Hans Delbruck on the causes of the German collapse.

The present volumes contain the reports of the First and Second Subcommittees. They contain statements of a great number of persons, army and navy officials, diplomatic officials, and others, having to do with the war. The volumes are very interesting, as well as instructive. Persons desiring information on the matters covered, should read these books.

WIGMORE ON EVIDENCE

John Henry Wigmore, Professor of the Law of Evidence in the Law School of Northwestern University, needs no introduction to the American lawyer. Since the publication of his work on Evidence in 1904, he has been a recognized authority on the subject. To mention evidence is to think of Wigmore.

The second edition of Professor Wigmore's work on Evidence is just published in five volumes. Its full title is, A Treatise on the Anglo-American System of Evidence in Trials at Common Law. It includes the statutes and judicial decisions of all jurisdictions of the United States and Canada. The work done in making this edition is indicated in a paragraph of a letter written by the author to the publishers, which is as follows: "In general, the second edition will offer: A complete critical re-examinaion of the text; numerous enlargements of it, to include new topics; revised citations for the entire body of statute-law, showing the new numberings of statutes in the latest current official editions; the inclusion of some 800 new citations of statutes and some 15,000 new citations of recent judicial decisions; together with numerous typographical improvements and other helps for the reader. All of this is the result of my own personal research and scrutiny, without other professional assistance."

Little need be said to the profession by way of acquainting its members with this work, which has stood out as the foremost authority on the subject for nearly twenty years. It is a classic, by the recognized master of the subject. It ought to be, it must be available to every practicing lawyer, as well as to every judge upon the bench.

Little, Brown & Company, Boston, are the publishers.

DIGEST.

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Arrest**—Resisting an Officer.—Under Code Cr. Proc. 1911, art. 259, providing that a peace officer may arrest one committing a felony or offense in his presence, and Pen. Code 1911, art. 470, denouncing the use of vociferous language or swearing near a public place, and Pen. Code 1911, art. 472, defining "public place" as being any public road or place at which people are assembled, and Pen. Code 1911, art. 1020, denouncing as a misdemeanor cursing or abusive language, where plaintiff, in the presence of nine persons, swore at a peace officer who accompanied the sheriff, and told the sheriff that he could not arrest a person for whose arrest he had a warrant, and stepped in the sheriff's way to prevent the arrest, the arrest of plaintiff without warrant was proper, on the ground that plaintiff was engaged in a breach of the peace and in resisting a peace officer.—Haverbekken v. Hollingsworth, Tex., 250 S. W. 261.

2. **Automobiles**—Authority to Use Question For Jury.—Where a general sales agent, to whom a car had been furnished, requested a truck driver, who had been directed to make repairs and to do anything that might be asked of him, to test the battery, and authorized him to take the car home with him to dinner to enable him to make a prompt return, and an accident occurred during the trip, held that it was a question for the jury whether the use was under authority of the master and in pursuance of his business.—Zondler v. Foster, Pa., 120 Atl. 705.

3.——Child Using Parent's Automobile.—Where a parent purchases an automobile for the use of his family, a child using it for his own pleasure is a servant of his parent in doing so, and if, in the course of his travels, he negligently manipulates the machine, the act is within the scope of his employment.—Mooney v. Gilreath, S. C., 117 S. E. 186.

4.——Defendant's Negligence Question For Jury.—Evidence that defendant's stage, traveling at a high rate of speed, crossed a bridge which was both wet and slippery, and on reaching the end of the bridge skidded violently, and struck plaintiff, who was about eight feet from the road, held to make defendant's negligence a question for the jury.—Bloom v. Allen, Calif., 214 Pac. 481.

5.——Instructions on Contributory Negligence Hypothecated.—Neither plaintiff's testimony that he was crossing a street not at an intersection, but where the traffic was light, nor defendant's evidence that there were many automobiles on the street, and that plaintiff jumped in front of defendant's automobile in trying to avoid collision with another, requires the instruction on contributory negligence to be hypothecated on the idea that plaintiff was crossing the street at an unusually dangerous place, and was therefore bound to exercise care commensurate with the increased danger.—Carr v. Warford, Ky., 249 S. W. 1024.

6.——Parent Liable For Tort of Son as Agent.—While a parent is not liable for the son's torts solely by reason of the relationship, where the parent owns the car for the convenience and pleasure of the family, the minor child, using it for his own purpose with the parent's consent or approval, represents the parent in such use as to negligent injury to a third person.—Robertson v. Aldridge, N. C., 116 S. E. 742.

7.——Position of Passenger in Car.—A passenger in a motor truck, sitting on the floor in front of the seat with his feet on the running board, when he was thrown from the truck and injured because defendant's automobile collided therewith, was not guilty of contributory negligence as a matter of law.—Rose v. Cartier, R. I., 120 Atl. 581.

8. **Bankruptcy**—Assets Inure to Grantee.—Where one of the alleged bankrupts had conveyed certain land and personal property to his wife, the deed reciting the grantee's knowledge of pending proceedings by another to recover an interest in the land, a decree subsequently rendered in the proceedings referred to for the value of permanent improvements placed on that interest, as permitted by Civ. Code Ga. 1910, § 5587 et seq., inured to the benefit of the grantee, so that it could not be considered as an asset of the grantor in determining his solvency.—R. P. Brown & Co., v. Glover Grocery Co., U. S. C. C. A., 287 Fed. 709.

9.——Assets Unaffected by Illegal Mortgage.—A holding by a state court, which had appointed a receiver for a railroad corporation, all of whose stock was owned by bankrupt coal company, that the relations between the two companies was such that the bonds issued by the railroad company to the coal company were invalid as against the creditors of the railroad company, and that the mortgage securing the same was illegally executed, does not show that the claim of the receiver that the assets of the railroad company did not belong to the coal company was merely colorable.—Lynch v. Roberson, U. S. C. C. A., 287 Fed. 433.

10.——Bona Fide Purchaser Secure After Conveyance by Preferred Creditor.—Bankruptcy Act, § 60, as amended in 1910 (Comp. St. § 9644), which, after declaring certain preferences to be voidable, authorizes the trustee to recover the property affected thereby or its value "from such person," does not entitle the trustee to recover property which was the subject of an unlawful preference from a bona fide holder thereof for value, who received it from the preferred creditor, any more than a fraudulent conveyance can be recovered from a bona fide purchaser under section 70e of the act (Comp. St. § 9654).—Bennett v. Semmes, U. S. D. C., 287 Fed. 745.

11.——Compensation of Receiver.—Under Bankruptcy Act, § 48d (Comp. St. § 9632 [d]), as to compensation for receivers, where $30,303.48 passed through the hands of receiver for electrical supply company, he having continued the business for a time, in which proceedings reclamation proceedings were instituted, allowance of statutory commissions of $443.03 and an equal amount as additional compensation for continuing the business, held not excessive on the ground that certain of the reclamation proceedings were then pending.—In re Myley Electrical Supply Co., U. S. C. C. A., 287 Fed. 524.

12.——Composition Rejected After Acceptance.—Where a composition offer has been made, and money has been deposited in a designated depository for the purpose of a composition, "subject to the further order of the court," the Court, on application of the receiver, may order that the money be turned back to him; he representing that there is no possibility of the composition being consummated.—In re Bryer, U. S. C. C. A., 287 Fed. 123.

13.——Delay in Filing Claim Exempts Lien.—Lien for rent accruing prior to filing of involuntary peti-

tion against lessee was lost, where claim therefor was not filed within two months of the time when the rent sought to be enforced became due, under Rem. Comp. Stat. § 1203—1, and hence claim for such rent did not constitute a preferred claim.—In re McNeice, U. S. C. C. A., 287 Fed. 706.

14.——Exemption Denied Partner.—Where a partnership and one partner were adjudged bankrupt, but two other partners were not, the bankrupt partner would not be allowed his exemptions under Const. N. C. art. 10, and statues, where the other partners objected.—In re Aurora Hardware Co., U. S. D. C., 287 Fed. 164.

15.——Grantee Must Make Accounting.—One to whom a bankrupt fraudulently conveyed property must account to the bankrupt's trustee for rentals collected by him.—In re Zerbersky, U. S. D. C., 287 Fed. 600.

16.——Independent Department of Department Store Not Liable.—Claimants conducted the grocery department in bankrupt's department store, leasing the space used from bankrupt, buying their goods in their own name, and hiring and paying their own help, though their business with the public was conducted and advertised under the name of bankrupt. Held that their goods were not subject to the debts of bankrupt, none of which were contracted after they entered the business.—Fink v. Sack, U. S. C. C. A., 287 Fed. 514.

17.——Mortgage in Excess of Value Not Fraud.—Mortgages executed by a merchant, who subsequently became bankrupt more than four months after executing them, which covered his entire stock in trade and fixtures, and which were intended to secure an indebtedness he owed to the mortgagee, his brother, for an amount largely in excess of the value of the property transferred, are not fraudulent conveyances, though thereafter the mortgagor purchased a large amount of goods on credit, and his creditors received nothing on their claims because of the mortgage of which they were charged with notice.—Levy v. Weidhorn, U. S. D. C., 287 Fed. 754.

18.——Objections of Occupation Reviewable by Appeal.—Although, on hearing of involuntary bankruptcy petition, the alleged bankrupt demanded and obtained a jury trial of the issues in the case, the adjudication of bankruptcy therein was not reviewable solely by writ or error, for the issue whether he was engaged chiefly in farming or in lumbering was not one of the issues regarding which he had a right, under Bankruptcy Act, § 19a (Comp. St. § 9603), to a trial by jury; hence the verdict upon that issue was merely advisory, and the adjudication necessarily involved a finding and decree of the court below as a court of equity that he was not engaged chiefly in farming when he committed an act of bankruptcy, and such finding and decree was reviewable by appeal, and not by writ of error.—Moore v. Yampa Mercantile Co., U. S. C. C. A., 287 Fed. 629.

19.——Objections Sustained Prevent Discharge.—If one of the objections raised in opposition to the discharge of a bankrupt is well pleaded, and is sustained by the evidence, discharge should be refused.—Swift & Co. v. Fortune, U. S. C. C. A., 287 Fed. 491.

20. **Banks and Banking**—Acceptance Necessary by Creditor.—Plaintiff's debtor drew checks which were taken by the debtor's agent to defendant drawee bank, which in lieu thereof delivered to debtor's agent cashier's checks payable to order of plaintiff and then charged debtor's account with amount of checks, and the agent without authority indorsed the checks in plaintiff's name and cashed them at his own bank, which in turn presented them to defendant bank, where they were paid. Held, that plaintiff could recover the amount of the checks from the bank, it being immaterial that plaintiff did not know of the issuance of and had not received either the original or cashier's checks, and that plaintiff did not agree to accept the checks in liquidation of the drawee's indebtedness.—Morris & Bailey Steel Co. v. Bank of Pittsburgh, Nat. Ass'n, Pa., 120 Atl. 698.

21.——Acceptance by Drawee Discharges Indorser.—A bank has no authority to charge the account of the depositor of a check which clearly shows upon its face that it had been accepted by drawee, which acceptance discharged depositor from his liability as indorser.—Bull v. Novice State Bank, Tex., 250 S. W. 232.

22.——Acceptance by Telegraph.—Where a bank, receiving a telegram, "Will you pay" draft of $5,000 drawn by a named party, replied, draft "is good today," such reply was an acceptance based only on condition that the funds were on hand at the time the draft was presented; and, where the draft was thereafter promptly presented for payment when funds were on hand to pay it, the bank had no right to refuse payment and appropriate the drawee's funds in the bank to the bank's debt.—Conn. v. San Antonio Nat. Bank, Tex., 249 S. W. 1045.

23.——Authority to Re-Charge an Account.—A bank which, on deposit of check drawn on it by R. to P., credits the amount to P.'s account, and erroneously charges it to a special deposit account made to the credit of R. for the purpose of payment of a check to S., there being no funds in R.'s general account, may without liability to P. recharge the amount to P.'s account, crediting it to the special deposit account.—First Nat. Bank of Ashland v. Prickett, Ala., 95 So., 920.

24.——Bank as Agent Must Make Accounting.—Where, in consideration of a payment of money by plaintiff in New York, defendant promised to deliver rubles to plaintiff in Russia through defendant's Russian branch, and made such deliveries as long as performance was possible, but the Russian government confiscated defendant's Russian branch and made further performance impossible, held that defendant, in action in the nature of damages for failure to perform in Russia according to agreement, and not for rescission, wsa not required to return the balance of the deposit.—Sokoloff v. National City Bank, N. Y., 199 N. Y. S., 355.

25.——Commingling Assets as Fiduciary.—The right given by section 11(k) of Act Cong. Dec. 23, 1913, as amended by Act Sept. 26, 1918, § 2 (U. S. Comp. St. Ann. Supp. 1919, § 9794), to national banks to occupy fiduciary positions is not affected by the fact that under the federal law they are permitted to commingle the assets held in fiduciary capacity with their other assets after they have set aside government bonds or other securities approved by the Federal Reserve Board, and that the federal law allows the state authorities to inspect books and records of only that part of their assets which are received in a fiduciary capacity, while the state acts allow supervision by the banking department of all assets and forbids substitution of securities.—In re Turner's Estate, Pa., 120 Atl. 701.

26. **Bills and Notes**—Banks Right to Collect on Protested Check.—The fact that a clerk in a bank, through inadvertence, after protest of a check, had charged the amount to a partnership account in which the payee was one of the partners, where the check was not indorsed over to that account, and where the account was not in existence at the time the check had been paid, would not affect the right of the bank to collect the amount of the check as a bona fide holder for value.—Carhart v. Second Nat. Bank of Phillipsburg, N. J., 120 Atl. 636.

27.——Due Date Does Not Affect Negotiability.—A coupon bond secured by mortgage contained the following stipulation: "If any interest coupon or any part thereof is not paid when due or in case of failure to comply with any of the requirements of the mortgage given by the maker hereof to secure the payment of this bond the principal and accrued interest shall become due and payable at once at the option of the legal holder of this bond." Held that the language did not render the instrument non-negotiable within the meaning of the Negotiable Instruments Law.—Commerce Trust Co. v. Guarantee Title & Trust Co., Kan., 214 Pac. 610.

28.——Marginal Notations.—Where a demand note secured by a mortgage bore a marginal notation, "Due 3/1/19," it became due on March 1,

1919, as a note must be construed with its marginal notation.—Whittier, Sheriff, v. First Nat. Bank of Sterling, Colo., 214 Pac. 536.

29. **Carriers of Goods**—Delay in Transportation and Delivery.—Showing of failure by carrier to transport and deliver goods within reasonable time constitutes prima facie case of conversion.—American Ry. Express Co. v. Santa Anna Gas Co., Tex., 250 S. W. 271.

30.——Shipper Must Sue.—Where goods were shipped consigned to the shipper himself for delivery to buyers on payment of draft with bill of lading attached, an action against the carrier for damage to the goods during passage, should have been brought by the shipper, and not the buyers, since the subsequent delivery of the goods to the buyers on their payment of the draft did not operate as an assignment of the right to recover the damages.—Louisville & N. R. Co. v. Sarris & Collas, Ala., 95 So. 903.

31. **Carriers of Passengers**—Injury by Falling Coach Window.—Where passenger entered coach and took vacant seat by window that was then open, and placed her arm on the window sill, and after the train had gone about eight miles the window fell upon the arm and injured it, the rule of res ipsa loquitur did not apply, and the passenger should have been non-suited, though she testified she neither touched the window nor did anything else to cause it to fall.—Saunders v. Norfolk & W. Ry. Co., N. C., 117 S. E. 4.

32. **Chattel Mortgages**—Priorities.—A lien on an automobile for repairs was subordinate to a prior recorded chattel mortgage, where the mortgagor operated a garage and automobile service station equipped to make ordinary repairs, and the mortgage secured a demand note, under Gen. Laws 1909, c. 257, § 24, and chaper 253, §§ 6, 7.—Providence Buick Co. v. Pitts, R. I., 120 Atl. 583.

33. **Commerce**—Power of Congress to Aid and Encourage.—The power of Congress to regulate interstate and foreign commerce includes the power to adopt measures to aid and encourage such commerce, and in promoting these objects the power of taxation may properly be exercised.—Dayton-Goose Creek Ry. Co. v. United States, U. S. D. C., 287 Fed. 728.

34. **Constitutional Law**—Conveyance of Property.—Whether R. I. § 2160, permitting the husband to convey part of the community property without his wife's consent, is wise is for the Legislature, not the courts.—Nixon v. Brown, Nev., 214 Pac. 524.

35. **Corporations**—Attack Upon De Facto Corporation.—Exceptions to the granting of a corporate charter filed by individuals on the ground that the place where the business of the corporation was to be transacted was not explicitly stated, as required by statute, cannot be considered on appeal from the dismissal of the exceptions and the granting of the charter, since the company was at least a de facto corporation, and the validity of its formation could be attacked only by quo warranto through suggestion by the Attorney General.—In re Mt. Sharon Cemetery, Pa., 120 Atl. 700.

36.——Lease Anti-Dating Authority.—A lease executed by the officers of a corporation, which bore date two days before the date of the resolution of the directors authorizing its execution, but under which the corporation had gone into possession, and retained possession for 2½ years, until its insolvency, was valid, in the absence of any claim of fraud or mistake in its execution.—Bradford v. Graham, U. S. C. C. A., 287 Fed. 686.

37.——Status of Bookkeeper.—The bookkeeper of a corporation is a mere clerical employee, and, unless given general authority by the corporation or special authority with reference to the particular transaction, he cannot bind the corporation by his agreement made for it.—Main St. Tobacco Warehouse Co. v. Bain Moore Tobacco Co., Ky., 250 S. W. 98.

38.——Subscription Unpaid No Stock Issued.—While a subscriber to stock in a corporation, who has neither paid the subscription nor received his certificate, may not be a stockholder of record, he is entitled to all the privileges of a stockholder until his rights are forfeited, under Stock Corporation Law, § 54.—In re Automotive Manufacturers' Ass'n, N. Y., 199 N. Y. S. 313.

39. **Covenants** — Taking Boarders Personally Known or Recommended.—Where covenants in a partition deed provided that only first-class private dwellings should be erected on the premises, and enumerated a list of prohibited, uses, held, as boarding houses were not expressly prohibited, the principle of "expressio unius est exclusio alterius" applied, and taking in boarders personally known or recommended, and not taken indiscriminately from the public, did not violate the covenant, especially as there was no claim that this constituted a nuisance, and the covenant not provided for a private dwelling for one family only.—Smith v. Scoville, N. Y., 199 N. Y. S. 320.

40. **Fraud**—Right to Recover Attorney's Fee.—In an action for expenses incurred in an effort to recover possession of land of which plaintiff was deprived by defendant's fraud, attorney's fees in proceedings by plaintiff to remove defendant as administrator of her husband's estate, and in ejectment proceedings by her against the purchaser at a partition sale, were properly allowed.—Boyles v. Burnett, Mo., 249 S. W. 719.

41. **Health**—Police Power.—The designation of the diseases named in class "B" of regulation Number 2, and regulations Number 18, Number 23, and Number 24, of the Ohio Sanitary Code, in relation thereto, adopted by the public health council of the state department of health, effective July 1, 1920, are a lawful exercise of the police power of the state.—Ex Parte Company, Ohio, 139 N. E. 204.

42. **Insurance**—Against Public Policy to Pay.—In view of Const. art 1, § 12, prohibiting corruption of blood or forfeiture of estate and deodands, which establishes the public policy of the state as opposed to forfeitures for conviction for crimes, it is not contrary to public policy for a life insurance company to pay to the beneficiary the amount of the policy upon the life of one who had been executed by the state for murder.—Fields v. Metropolitan Life Ins. Co., Tenn., 249 S. W. 798.

43.——Deductions For Unpaid Premiums.—Where a carrier obtained a general floating policy of marine insurance covering goods to be shipped by it for "account of whom it may concern," containing an express provision that losses should be payable only after first deducting all indebtedness for premiums, held on the receivership of the carrier, that shippers who paid the premium on their shipment as part of the freight, which premium was paid to the insurer, could recover the amount of their loss directly from the insurer, without deductions for any premiums on other shipments of other shippers, which the carrier had not paid to the insurer.—Young v. St. Paul Fire & Marine Ins. Co., N. Y., 199 N. Y. S. 46.

44——Insurer Not Liable When Insured Settles Claim.—Under automobile accident indemnity policy, conditioned that insured should not settle any claim, except at his own cost without the insurer's written consent, and that owner should be liable only for expense actually sustained and paid by insurer after actual trial of the issue, where judgment for plaintiff in action for death caused by the automobile while driven by insured's daughter was, on appeal, affirmed as to the daughter, and reversed as to the insured, and thereafter insured, without the insurer's consent settled the judgment against his daughter and took an assignment thereof, held that insurer was not liable for the amount paid for such settlement; no action having been brought and no judgment having been recovered against insured by his daughter, and he in any event being under no liability to indemnify her.—Thacher v. Aetna Accident & Liability Co., U. S. C. C. A., 28 Fed. 484.

45.——Lumber in Dry Kiln.—Under lumber insurance policy providing for 200-foot clear space, but allowing "loading or unloading within or transportation of lumber across such clear space," staves in a drying kiln between which and the mill and engine room there was not a 200-foot clear space, could not be considered covered as being in process of "transportation," or being "loaded

or unloaded" across the clear space because of the fact that, when such staves were hauled to the dry kiln, they were unloaded onto two-wheel trucks and rolled into the kiln at one door, and when sufficiently dry they were rolled out the other door on the trucks, and thence carried to the factory.—Indiana Lumbermen's Mut. Ins. Co. v. Myers Stave & Mfg. Co., Ark., 250 S. W. 18.

46.——Suicide.—Although self-destruction while sane is not an "accidental death," death by suicide committed while the insured was insane is "accidental" within an accident insurance policy.—Aufrichtig v. Columbian Nat. Life Ins. Co., Mo., 249 S. W. 912.

47.——Vacant Property.—Clause avoiding policy, "if the dwelling is not now personally and continuously occupied by assured, or becomes vacant by his removal and so remains vacant for more than 10 days without" a permit, was not a warranty that insured himself would occupy, but merely required occupancy by insured or some other person.—Barnes v. Dirigo Mut. Fire Ins. Co., Me., 120 Atl. 675.

48. **Landlord and Tenant**—Right to Remove Manure.—In the absence of an express contract providing for such right, a tenant has no right to remove from the premises manure produced in the usual course of husbandry upon the farm during his tenancy, as such manure becomes appurtenant to and is treated as a part of the realty.—Hammond v. Driver, Ga., 117 S. E. 264.

49. **Libel and Slander**—The Word Crook Imputes Dishonesty.—The word "crook," when spoken of a merchant in respect to his mercantile transactions, is capable, taken by itself, of imputing dishonesty, but the context cannot be ignored, and, in the absence of any innuendo attributing a different meaning to them, the words immediately following must be taken as amplifying and explaining the epithet.—Herman v. Post, Conn., 120 Atl. 606.

50. **Licenses**—Nickel-in-the-Slot Machines.—A coin lock placed on doors of toilets by a hotel, which could be opened by a key in the hands of employees, brass checks furnished guests, or nickels by other persons, are not nickel-in-the-slot machines, within the meaning of Revenue Act 1919, schedule 73, requiring the payment of a license; such locks being fixtures and a part of the realty.—State v. New Florence Operating Co., Ala., 95 So. 913.

51. **Municipal Corporations**—Automobile Passing Street Car.—The failure of the driver of an automobile, who was passing a street car which he knew was stopping to receive passengers, to look at the side of the street along which he was traveling for persons leaving the center parkway to board the street car, is not excused by the fact that he was looking in the other direction to see if any vehicles or pedestrians were there.—Moss v. Koetter, Tex., 249 S. W. 259.

52.——Defective Teeter-Totter.—If plaintiff's injuries were caused by the negligence of the city in permitting a teeter-totter in its park to remain in defective condition, coupled with plaintiff's dizziness while on the teeter-totter, the city is liable, since the device was calculated to make one dizzy, and therefore the need for keeping it in condition was the greater.—Muser v. Kansas City, Mo., 249 S. W. 681.

53.——Turning Automobile So As to Proceed In Opposite Direction.—Automobile driver who collided with motorcycle which had been following his automobile, in attempting, while in a public street, to turn the automobile around so as to proceed in the opposite direction, without compliance with Motor Vehicle Act, § 20, subd. "q," making it unlawful to turn an automobile around so as to proceed in the opposite direction in a business district, except at an intersection on the public highway, and subdivision "h," providing that, before turning, stopping or changing the course of an automobile, the driver shall ascertain if there is sufficient space for such movement to be made in safety and shall give a signal of his intention to turn, held negligent.—Fate v. Gross, Calif., 214 Pac. 465.

54. **Negligence**—Duty of Driver to Invitee.—An automobile driver owes an invited guest the duty of exercising reasonable care.—Bolton v. Madsen, N. Y., 199 N. Y. S. 353.

55.——Liability of Driver to Invitee.—One riding by invitation * * * in another's automobile cannot recover for injury caused by the other's negligence in driving, unless it amounted to gross negligence.—Harris v. Reid, Ga., 117 S. E. 256.

56. **Principal and Agent.**—Heat, Light and Power Necessary For Office Building.—Where defendant company moved its general offices from Springfield to St. Louis, and left the office at Springfield in charge of an agent of limited powers to look after the unfinished business of the company, including the management of the building in which defendant had offices, such agent had authority to make a contract with plaintiff for supplying the building with heat, light and power, where the building could not be operated without such services, even though the original powers granted to the agent did not authorize him to make such a contract.—Springfield Gas & Electric Co. v. Southern Surety Co., Mo., 250 S. W. 78.

57. **Sales**—Right to Recover Against Manufacturer of Machine Causing Damage.—A master, paying damages to injured employee under a common-law liability, would have a right of action over against a manufacturer, who installed the machine causing the injury according to plans and specifications prepared by itself, with knowledge on its part of the conditions under which the machine would be operated, and that it would be dangerous to employees if not properly constructed, and with knowledge that the master relied on it to manufacture a machine which would not be dangerous, but which machine, in violation of a warranty, was inadequate and thus dangerous, the result being an explosion and injury.—Dayton Power & Light Co. v. Westinghouse E. & Mfg. Co., U. S. C. C. A., 287 Fed. 439.

58. **Street Railroads**—Driver of Automobile Stopping in Front of Street Car.—The driver of an automobile or other vehicle, stopped for any temporary cause in front of an approaching street car, cannot be held guilty of negligence as a matter of law if he does not desert his vehicle, at least until it is reasonably certain that an impact is unavoidable, as he has a right to assume that those in charge of the approaching street car, seeing his predicament, will not recklessly run him down, and a right to make reasonable effort to start his vehicle, and so save it from a collision, and whether his acts constitute negligence is a question for the jury, in view of the circumstances.—Unger v. San Francisco-Oakland Terminal Rys., Calif., 214 Pac. 510.

59.——Right of Way.—Motor Vehicles Act 1920, § 1 (Ky. St. § 2739g1), defining "vehicle," as used in the act, as all vehicles passing over the highways, except road rollers and those which travel exclusively by rail, prevents that act from applying to determine the right of way between an automobile and a street car approaching on intersecting streets, and the right of way in such circumstances is therefore governed by an applicable city ordinance, so that it was error to instruct the jury under the state law that the street car had the right of way, when the automobile had the right of way under the city ordinance.—Louisville Ry. Co. v. Everett, Ky., 250 S. W. 103.

60. **Taxation**—Charges For Use of Highway.—Charges made by the Legislature for the use of highways are not taxes, and are not subject to the constitutional limitations upon the taxing power.—In re Opinions of the Justices, N. H., 120 Atl. 629.

61. **Workmen's Compensation Act**—Preventing Cart Backing Down Incline.—A strong able-bodied workman wheeling a cart weighing 1,200 pounds up an incline who suffered a mitral heart lesion during his endeavor to prevent the cart from backing down when it slipped, held injured by accident "arising out of or in the course of his employment," within the Industrial Act, so as to entitle him to compensation.—Cherdron Const. Co. v. Simpkins, Utah, 214 Pac. 593.